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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/744,267

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Raphael Angeline Ceulemans

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07/16/2009

THE PROCTER & GAMBLE COMPANY

Global Legal Department - IP

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EXAMINER

DEL COTTO, GREGORY R

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

07/16/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/744,267

Applicant(s)

CEULEMANS ET AL.

Examiner

Gregory R. Del Cotto

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4-6, 8 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6, 8 and 15-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 1, 4-6, 8, and 15-22 are pending. Claims 1, 3, 7, and 9-14 have been canceled. Applicant's arguments and amendments filed 3/23/09 have been entered. Note that, at the outset, the Examiner would like to point out that, as correctly stated by Applicant, the rejection of the instant claims using WO98/12295 in view of Klewsaat was inadvertently listed as a rejection under 35 USC 102(a) in the header line of the rejection mailed on 12/23/08 and should have been listed as a rejection under 35 USC 103(a). The correction has been made as set forth below.

Objections/Rejections Withdrawn

The following objections/rejections as set forth in the Office action mailed 9/19/08 have been withdrawn:

None.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-6, 8, and 15-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to instant claim 1, this claim is vague and indefinite in that there is no definition given for variables R^3 , R^4 , x, y, n, m, A, and q which appear in the structure for the polyoxyalkylene alkyl amine surface active agent as recited by instant claim 1. Clarification is required. Note that, for purposes of examination, these variables have

been given the meaning as listed in instant claim 4. Claims 4-6, 8, and 15-22 have also been rejected due to their dependence on claim 1.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4-6, 8, 15-17, and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/12295 in view of Klewsaat (US 4,888,119).

'295 teaches a composition comprising a dye fixing agent and a specific amino-functional polymer, said composition providing an improved color care on fabrics upon

laundry treatments. See Abstract. Suitable dye fixing agents are cationic and are based on various quaternized or otherwise cationically charged organic nitrogen compounds. These agents include Sandofix TPS, Rewin SRF, Rewin SRF_O, Rewin DWR, Tinofix FRD, etc., and they may be used in the compositions in amounts from 0.001% to 10% by weight. See page 5, lines 1-15. The amino functional polymers have the same general formula as recited by the instant claims. See page 6, line 10 to page 7, line 30. The amino functional polymers are present in amounts preferably from 0.5% to 5% by weight of the composition. See page 22, lines 15-25. Also, single long chain alkyl cationic surfactants may be used which have the same general formula as recited by instant claim 2. See page 31, lines 10-35. Surfactant concentration aids may also be used in the composition which helps achieving the desired finished product viscosity as well as stabilising the finished product upon storage. Surfactant concentration aids are typically selected from single long chain alkyl cationic surfactants, nonionic alkoxyated surfactants, etc. See page 31, lines 1-10. Additionally, a solvent such as propanol, isopropanol, dihydric-, trihydric-, and higher polyhydric alcohol may be used in the composition. See page 35, lines 10-20. Note that, the Examiner asserts that isopropanol or propanol would fall within the scope of instant claims 16, 17, and 19 as an ease of formulation solvent and mono-ol as recited by instant claim 17.

Also, a polyolefin dispersion may be used in the compositions which provide anti-wrinkles and improved water absorbency benefits to the fabrics. For ease of formulation, the polyolefin is preferably introduced as a suspension or an emulsion of

polyolefin dispersed by use of an emulsifying agent. The polyolefin suspension or emulsion preferably has from 1% to 50% by weight of polyolefin in the emulsion. When an emulsion is employed, the emulsifier may be any suitable emulsification or suspending agent and preferred emulsifiers include the ethoxylated fatty amine surfactants. The polyolefin is dispersed with the emulsifier or suspending agent in a ratio of emulsifier to polyolefin of from 1:10 to 3:1. Preferably the emulsion includes from 0.1% to 50% by weight of emulsifier in the polyolefin emulsion. The compositions of the present invention contain from 0.01 to 8% by weight of the dispersible polyolefin. See page 22, line 35 to page 24, line 8.

Note that, the Examiner asserts that, for example, if the ratio of emulsifier to polyolefin is 1:1 in the composition taught by '295, if the polyolefin is present in 1% by weight, then the emulsifier such as alkoxylated fatty amine surfactant would also be present in 1% by weight.

'295 does not teach the use of a polyoxyalkylene alkyl amine surface active agent or a composition containing a nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent, a polyamino-functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Klewsaat teaches an emulsion of cationic/anionic surfactant complex which is provided form addition to the wash water in the wash cycle operation of automatic washing machines, to make washed and dried laundry softer to the touch and static-free. See Abstract. Emulsifying agents may be used which are capable of emulsifying

the cationic/anionic surfactant to produce a stable emulsion which will not settle out on storage, and in which the complex will not be adversely affected. Suitable emulsifying agents include ethoxylated higher amines having 12 to 18 carbon atoms in the alkyl group and 5 to 50 moles of ethylene oxide per mole. See column 4, lines 20-60.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkyl ethoxylated amine in the composition taught by '295, with a reasonable expectation of success, because Klewsaat teaches the use of alkyl ethoxylated amines as emulsifying agents for providing a stable composition in a similar formulation and further, '295 teaches the use of ethoxylated fatty amines as emulsifying agents in general. Note that, the Examiner asserts that the teachings of '295 in combination with Klewsaat suggests compositions having the same ratio of scum reducing agent to the sum of polyamino-functional polymer and dye fixing agent as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent, a polyamino-functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '295 in combination with Klewkaat suggest a composition containing nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent, a polyamino-

functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Note that, the Examiner asserts that the teachings '265 in combination with Klewsaat suggests compositions which are clear as recited by instant claim 20 because '265 in combination with Klewsaat suggests compositions containing the same components in the same amounts as recited by the instant claims.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/12295 in view of Klewsaat (US 4,888,119) as applied to claims 1, 4-6, 8, 15-17, and 19-21 above, and further in view of WO97/03169.

'295 and Klewsaat are relied upon as set forth above. However, neither reference teaches the use of a solvent such as 1,2-hexanediol in addition to the other requisite components of the composition as recited by the instant claims.

'169 teaches aqueous fabric softener compositions containing principal solvents, especially mono-ol and diol principal solvents. See Abstract. Specifically, '169 teaches textile softening compositions for use in the rinse cycle of a textile laundering operation to provide excellent fabric-softening/static control benefits, the compositions being characterized by reduced staining of fabric, excellent water dispersibility, rewettability, and/or storage and viscosity stability at sub-normal temperatures. See page 1, lines 10-20. Suitable principal solvents include propanol, 1,2-hexandiol, etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use 1,2-hexanediol in the composition taught by '295, with a reasonable expectation of success, because '169 teaches the equivalence of propanol

to 1,2-hexanediol in a similar fabric treatment composition and further, '295 teaches the use of propanol.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO98/12295 in view of Bishop et al (US 4,135,878).

'295 is relied upon as set forth above. However, '295 does not teach the use of a polyoxyalkylene alkyl amine surface active agent having both ethoxy and propoxy groups or a composition containing a nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent having both ethoxy and propoxy groups, a polyamino-functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Bishop et al teach emulsifier-solvent scour compositions which are stable at elevated temperatures when incorporated into aqueous caustic media for treatment of textile materials. The scour compositions comprise an inert organic solvent media containing from 5 to 35% of at least one phosphate ester of an ethoxylated and/or propoxylated C8-C24 aliphatic or aromatic alcohol, from 1 to 10% of at least one C8-C24 carboxylic acid of salt thereof, and 4 to 20% of either at least one member from the group of sulfonated fatty acids or salts thereof, etc., or at least one of an ethoxylated and/or propoxylated C8-C24 aliphatic or aromatic alcohol, amine, or mercaptan, etc. Note that, the Examiner asserts that a mixed ethoxylated and propoxylated amine emulsifier as taught by Bishop et al would encompass the mixed ethoxy/propoxy amine surfactant as recited by instant 22.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkyl ethoxylated/propoxylated amine in the composition taught by '295, with a reasonable expectation of success, because Bishop et al teach the use of and equivalence of alkyl ethoxylated/propoxylated amines to alkyl ethoxylated amines as emulsifying agents in a similar textile cleaning composition, '295 teaches the use of ethoxylated fatty amines as emulsifying agents in general. Note that, the Examiner asserts that the teachings of '295 in combination with Bishop et al suggest compositions having the same ratio of scum reducing agent to the sum of polyamino-functional polymer and dye fixing agent as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a composition containing a nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent having ethoxy and propoxy groups, a polyamino-functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims, with a reasonable expectation of success and similar results with respect to other disclosed components, because the broad teachings of '295 in combination with Bishop et al suggest a composition containing nitrogen containing dye fixing agent, a polyoxyalkylene alkyl amine surface active agent having ethoxy and propoxy groups, a polyamino-functional polymer, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Response to Arguments

With respect to the rejection of the instant claims under 35 USC 103 using '295 in view of Klewsaat, Applicant states that the cited references fail to teach or suggest the specific polyoxyalkylene alkyl amine surface active agent recited by instant claim 1. Specifically, Applicant states that the cited references fail to teach or suggest the element where R2 is selected from C3-C4 linear alkyl, C3-C4 branched alkyl, 1, 2-propylene, and mixtures thereof. In response, note that, R2 is not required since y in the formula for the polyoxyalkylene alkyl amine surface active agent may be 0 as recited by instant claim 4. Thus, the Examiner maintains that the ethoxylated alkyl amine surfactants as taught by Klewsaat fall within the scope of the instant claims. Additionally, the Examiner maintains that one of ordinary skill in the art clearly would have been motivated to use an alkyl ethoxylated amine in the composition taught by '295, with a reasonable expectation of success, because Klewsaat teaches the use of alkyl ethoxylated amines as emulsifying agents for providing a stable composition in a similar formulation and further, '295 teaches the use of ethoxylated fatty amines as emulsifying agents in general.

With respect to the rejection of the instant claims under 35 USC 103 using WO98/12295 in view of Klewsaat, and further in view of WO97/03169, Applicant states that the additional reference of '169 fails to correct the deficiencies of '295 and Klewsaat with regards to the specific polyoxyalkylene alkyl amine surface active agent as recited by instant claims 1, 21, and 22. In response, note that, the Examiner asserts that '295 in view of Klewsaat is sufficient to suggest the claimed invention for the reasons as set forth above. '169 is a secondary reference relied upon for its teaching of a solvent such

as 1,2-hexanediol. The Examiner asserts that one of ordinary skill in the art clearly would have been motivated to use 1,2-hexanediol in the composition taught by '295, with a reasonable expectation of success, because '169 teaches the equivalence of propanol to 1,2-hexanediol in a similar fabric treatment composition and further, '295 teaches the use of propanol.

With respect to new claim 22, a new grounds of rejection has been made, as set forth above, which was necessitated by Applicant's amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571)

272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/
Primary Examiner, Art Unit 1796

/G. R. D./
July 13, 2009

